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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOE LORSHAI FARR, Defendant and Appellant.	E039218 (Super.Ct.No. RIF122270) OPINION

APPEAL from the Superior Court of Riverside County. Christian F. Thierbach, Judge. Affirmed.

H. Reed Webb, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Barry Carlton, Supervising Deputy Attorney General, and Stephanie H. Chow, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted appellant Joe Lorshai Farr of two counts of second degree commercial burglary (Pen. Code, § 459)[1] and two counts of possession of a completed check with intent to defraud (§ 475, subd. (c)). The trial court found true allegations that appellant had not remained free from prison custody for a period of five years on four prior prison commitments. (§ 667.5.) The court sentenced appellant to seven years eight months in prison, consisting of the upper term of three years for the principal burglary charge, plus a consecutive sentence of eight months for the second burglary charge and one year for each of the four prior prison commitment allegations. The prison terms for the check fraud counts were stayed pursuant to section 654.

In this appeal, appellant argues the evidence of his intent to defraud is insufficient to support the convictions for check fraud and burglary. Appellant also argues, purely for the purpose of preserving his right to federal habeas corpus review on this issue, that the sentencing court erred by sentencing him to upper and consecutive terms based on facts that were not found true beyond a reasonable doubt by a jury, in violation of *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*). We reject both contentions, and affirm the conviction and sentence.

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[1] All further statutory references will be to the Penal Code unless otherwise indicated.

STATEMENT OF FACTS

1. *Current Offenses*

On March 2, 2005, appellant opened an account at a credit union by depositing a payroll check in the amount of $804.17, made payable to him from "Diversfield Title Company." At that time, appellant withdrew $500 from the account. Later that day, appellant withdrew another $200. The credit union soon discovered that the payroll check "wasn't a good check," in that it had been drawn on a closed account at another bank, so the credit union immediately restricted the account and issued a fraud alert on the account.

Shortly thereafter, appellant went to another branch of the credit union and attempted to deposit a second payroll check from Diversfield Title Company in the amount of $825.50. This branch used a remote teller and pneumatic tube system, where communication between tellers and customers occurs through television screens and telephones. The teller saw the fraud alert on the account and called police, who arrived and arrested appellant.

Appellant had three other accounts at the credit union, all with social security numbers and addresses different from those he provided for the account opened on March 2, 2005. Appellant also attempted to open a fifth account on March 2, 2005, but the credit union would not open the account because the social security number appellant gave came back under both his name and another person's name.

When appellant opened the account with which these criminal charges are associated, he gave an address and telephone number that were the same as those listed

on the fraudulent checks for Diversfield Title Company. Both of those checks were drawn on an individual account in the name of Sharon M. Farr. The account was not a business account and was not in the name of Diversfield Title Company, although that was the name printed on the checks. The bank account was opened on January 21, 2005, and closed on February 14, 2005, because the social security number used to open it was not correct. At least seven checks written on that bank account were returned for insufficient funds.

2. *Prior Bad Acts*

In March 1999, appellant cashed a payroll check in the amount of $668.95 at a small shop where he had been a daily customer. The owner of the shop presented the check to his bank for payment, but it was returned as counterfeit because the maker of the check had not authorized it.

Also in March 1999, appellant attempted to cash a check at a gas station, but the manager found the check suspicious and called police. When questioned by police on a later date, appellant denied that the endorsement signature on the back of the check was his and said he did not recognize the check. However, a document examiner at the sheriff's department concluded that samples of appellant's signatures and the endorsement signature on the back of the check matched.

DISCUSSION

1. *Intent to Defraud*

Appellant contends that the evidence of his intent to defraud is insufficient to support the convictions for check fraud and burglary.

For the burglary charges, the prosecution was required to prove that appellant entered the credit union on both occasions on March 2, 2005, with the intent to commit check fraud. (§ 459.) For each of the check fraud charges, the prosecution was required to prove: 1) appellant possessed a completed check; 2) appellant had the specific intent to pass the check; and 3) appellant had the specific intent to defraud the credit union. (§ 475, subd. (c).) Appellant challenges the sufficiency of the evidence only as to the intent to defraud element.

Our review of any claim of insufficiency of the evidence is limited. "In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578.) Under this standard, the court does not "'"ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." [Citation.] Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*People v. Hatch* (2000) 22 Cal.4th 260, 272, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.)

Given this court's limited role on appeal, appellant bears a heavy burden in claiming there was insufficient evidence to sustain his convictions for burglary and check fraud. If the verdict is supported by substantial evidence, we are bound to give due

deference to the trier of fact and not retry the case ourselves. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Appellant's hurdle to secure a reversal is just as high when the prosecution's case depends primarily on circumstantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) In addition, the intent to defraud can be inferred from the circumstances surrounding these transactions, as well as other similar transactions (*People v. Smith* (1984) 155 Cal.App.3d 1103, 1148, disapproved on other grounds in *Baluyut v. Superior Court* (1996) 12 Cal.4th 826), i.e., the prior bad acts.

Viewing the evidence in the light most favorable to the judgment, there is substantial evidence to support the conclusion that appellant did have the specific intent to defraud when he entered the two credit union branches and presented the fraudulent checks on March 2, 2005. First, appellant had opened four separate accounts at the credit union, each with a different social security number and address. In fact, he attempted to open a fifth account the same day he committed these crimes, using a social security number that was connected with both appellant and another person. Second, he deposited a payroll check from a title company that did not exist and immediately withdrew almost the entire balance before the credit union had verified that it was drawn on a closed account. Third, appellant then traveled to another branch of the credit union, and attempted to deposit a second payroll check imprinted with the name of the same nonexistent title company and drawn on the same closed account. Fourth, appellant listed the same last name and address as Sharon M. Farr, the payroll check's account holder, which suggests he knew the checks were not valid. Finally, the evidence showed that appellant had passed or attempted to pass bad checks twice before. Thus, we find that

substantial evidence supports the jury's finding that appellant had the specific intent to defraud when he presented the two checks to the credit union.

2. *Right to Trial by Jury when Upper and Consecutive Terms are Imposed*

Appellant contends that, because the imposition of the upper term for the principal burglary count and the running of the two burglary terms consecutively were based on factual findings not made by the jury or admitted by him, his right to determination of those facts by the jury under a beyond a reasonable doubt standard of proof was violated. (*Blakely, supra*, 542 U.S. 296.) Appellant acknowledges that his argument is foreclosed by our Supreme Court's decision in *People v. Black* (2005) 35 Cal.4th 1238 (*Black*), in which the court rejected the interpretation of *Blakely*, and *Black* is binding on this court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) He raises the argument to preserve the issue for further review. Under *Black*, we find the argument unmeritorious.

DISPOSITION

The conviction and sentence are affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.